

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-97506; File No. SR-Phlx-2023-09)

May 15, 2023

Self-Regulatory Organizations; Nasdaq PHLX LLC; Order Granting Approval of Proposed Rule Change to Permit the Listing and Trading of Options on the Nasdaq-100 ESG Index

I. Introduction

On March 28, 2023, Nasdaq PHLX LLC (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to permit the listing and trading of options on the Nasdaq-100 ESG Index. The proposed rule change was published for comment in the Federal Register on April 6, 2023.³ The Commission has received no comments on the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposes to permit the listing and trading of options on the Nasdaq-100 ESG Index (“NDXESG”; and such options, “NDXESG options”). The NDXESG is a broad-based, modified ESG Risk Rating Score-adjusted market capitalization-weighted index that is designed to measure the performance of the companies in the Nasdaq-100 Index (“NDX”) that meet specific environmental, social, and governance (“ESG”) criteria outlined in the NDXESG’s methodology.⁴ The NDXESG at all times consists of a selection of securities in the NDX.⁵ The

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 97232 (March 31, 2023), 88 FR 20582 (“Notice”).

⁴ See Notice, 88 FR at 20583 and n.5.

⁵ See id. at 20583.

Exchange believes there is unmet market demand for exchange-listed security options on the NDXESG,⁶ and that the introduction of NDXESG options will attract order flow to the Exchange, increase the variety of listed options to investors, and provide a valuable hedging tool to investors.⁷

The Exchange states that the NDXESG meets the “broad-based index” definition set forth in the Exchange’s rules at Phlx Options 4A, Section 2(a)(13).⁸ The Exchange also states that the NDXESG meets, and NDXESG options would meet, the Exchange’s initial and maintenance listing criteria for a broad-based index and options thereon, as set forth in Phlx Options 4A, Sections 3(d) and 3(e).⁹ NDXESG options could have up to twelve near-term expiration months, as well as long-term options series.¹⁰ In addition, the NDXESG options would be a.m.-settled and cash-settled contracts with European-style exercise.¹¹ Strike price intervals would be at no less than \$2.50 intervals.¹² The minimum trading increment for NDXESG options would be \$0.05 for options trading below \$3.00 and \$0.10 for all other options, and NDXESG options would be available for trading during the Exchange’s standard trading hours for index options.¹³ NDXESG options would also be subject to the same margin and suitability rules that apply to the Exchange’s other index options.¹⁴

⁶ See id. at 20585.

⁷ See id. at 20584.

⁸ See id. at 20583.

⁹ See id.

¹⁰ See id.

¹¹ See id.

¹² See id.

¹³ See id. at 20584.

¹⁴ See id.

The position and exercise limits for NDXESG options would be 25,000 contracts on the same side of the market.¹⁵ Each member or member organization that maintains a position in NDXESG options on the same side of the market in excess of 100,000 contracts for its own account or for the account of a customer would be required to file a report with the Exchange pursuant to proposed Phlx Options 4A, Section 6(c).¹⁶ The position and exercise limits for FLEX options on the NDXESG would also be 25,000 contracts on the same side of the market.¹⁷

The Exchange states that it has, and that it believes the Options Price Reporting Authority (“OPRA”) has, the necessary systems capacity to handle additional quotations and message traffic associated with the proposed listing and trading of NDXESG options.¹⁸ The Exchange also states that index options are integrated into the Exchange’s existing surveillance system architecture and are thus subject to the relevant surveillance processes.¹⁹ The Exchange states that it has adequate surveillance procedures to monitor trading in NDXESG options, thereby aiding in the maintenance of a fair and orderly market.²⁰

The Exchange also proposes to amend its rule text at Phlx Options 8, Section 34(e), to directly align the position limits for FLEX index options with the position limits for the corresponding standard index options within Phlx Options 4A, Section 6. According to the Exchange, this proposed amendment would not change the current position limits for FLEX index options, but rather would simply cross-reference the index option position limits in Phlx

¹⁵ See id. The proposed position and exercise limits are in accordance with Phlx Options 4A, Section 6(a), and Options 4A, Section 10.

¹⁶ See id.

¹⁷ See proposed Phlx Options 8, Section 34(e).

¹⁸ See Notice, 88 FR at 20584.

¹⁹ See id.

²⁰ See id.

Options 4A, Section 6, as opposed to restating each position limit within the rule text. Today, the position limits for standard index options are identical to the FLEX index options on the same index, and with this proposed amendment, those position limits would continue to be identical.²¹ Finally, the Exchange proposes a technical correction to Phlx Options 4A, Section 6(c), to add an “or” within that paragraph.²²

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder.²³ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,²⁴ which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and Section 6(b)(8) of the Act,²⁵ which requires that the rules of a national securities exchange not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Permitting the trading of options on an index of securities enables investors to participate in the price movements of the index’s underlying securities and allows investors holding positions in some or all of such securities to hedge the risks associated with their portfolios. The

²¹ See id.

²² See id.

²³ In approving this proposed rule change, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

²⁴ 15 U.S.C. 78f(b)(5).

²⁵ 15 U.S.C. 78f(b)(8).

Commission believes that the Exchange’s proposal to permit the listing and trading of NDXESG options could benefit investors by providing them with additional investment and hedging alternatives. As the Exchange notes, the proposed NDXESG options could become part of market participants’ investment and hedging strategies related to positions in both the NDXESG and NDX in light of the relationship between these two indices.²⁶ Moreover, options on broad-based, ESG-related indexes are not novel. For example, options on the S&P 500 ESG Index are listed and traded on Cboe Exchange, Inc.²⁷ The proposed NDXESG options could, therefore, promote competition; further, consistent with Section 6(b)(8) of the Act, they are not designed to impose an unnecessary burden on competition.

The Commission also believes that the proposal is consistent with the protection of investors and the public interest. The NDXESG is a broad-based index under the Exchange’s rules, and the NDXESG and proposed NDXESG options meet the Exchange’s criteria for the initial listing of options on a broad-based index, which previously have been approved by the Commission.²⁸ After initial listing, the Exchange’s maintenance listing criteria, which also have been previously approved by the Commission, will apply to NDXESG options.²⁹ The Commission believes that the application and satisfaction of these listing requirements

²⁶ See Notice, 88 FR at 20585.

²⁷ See Securities Exchange Act Release No. 89749 (September 2, 2020), 85 FR 55723 (September 9, 2020).

²⁸ See Notice, 88 FR at 20585; Phlx Options 4A, Section 3(d); see also Securities Exchange Act Release No. 54158 (July 17, 2006), 71 FR 41853 (July 24, 2006) (Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Relating to Listing Standards for Broad-Based Index Options) (“Phlx Listing Standards Approval Order”).

²⁹ See Notice, 88 FR at 20585; Phlx Options 4A, Section 3(e); see also Phlx Listing Standards Approval Order.

significantly minimize the potential for manipulation of the NDXESG or for adverse market impact to result from the listing or trading of NDXESG options.

In addition, the proposed terms for NDXESG options – such as listing up to twelve near-term expiration months and LEAPS, the strike interval, a.m.-settlement, cash-settlement, European-style exercise, and the minimum trading increment – are consistent with the terms for other broad-based index options trading on Phlx, including NDX options.³⁰ In the same vein, the Exchange rules applicable to broad-based index options regarding sales practices, customer accounts, position and exercise limits, margin requirements, and trading halts will apply to the NDXESG options.³¹ Likewise, the Exchange’s existing surveillance and reporting safeguards for index options will apply to NDXESG options.³² Further, the Exchange states that it and OPRA have the necessary systems capacity to handle the additional message traffic associated with the listing of new option series that may result from this proposal.³³ The Commission believes that the Exchange’s rules governing the trading of index options help to ensure the maintenance of fair and orderly markets, including with respect to the proposed NDXESG options, which is consistent with the protection of investors and the public interest.

Importantly, NDXESG options would be subject to the 25,000 contract position limit that is generally applicable to broad-based index options under Phlx Options 4A, Section 6(a), and an equivalent exercise limit under Phlx Options 4A, Section 10. Further, under amended Phlx Options 8, Section 34(e), and Phlx Options 8, Section 34(f), the position and exercise limits for FLEX options on the NDXESG would also be 25,000 contracts on the same side of the market.

³⁰ See Notice, 88 FR at 20585.

³¹ See id.

³² See id.

³³ See id. at 20584.

The Commission believes that the proposed position and exercise limits also should help minimize the potential for manipulation and adverse market impact surrounding the use of the NDXESG options.

Finally, the Commission believes that the proposed amendments to correct a technical grammar error in Phlx Options 4A, Section 6(c), and to align the position limits for FLEX index options in Phlx Options 8, Section 34(e), with the position limits for the corresponding standard index options in Phlx Options 4A, Section 6, would clarify the rule text, reduce the potential for confusion regarding FLEX index option position and exercise limits, and promote internal consistency within the Exchange's rules.

Based on the foregoing, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,³⁴ that the proposed rule change (SR-Phlx-2023-09) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁵

Sherry R. Haywood

Assistant Secretary

³⁴ 15 U.S.C. 78s(b)(2).

³⁵ 17 CFR 200.30-3(a)(12).